

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SPECIAL COUNSEL,
Petitioner,

v.

DEBORAH G. GILES,
Respondent,

and

STATE OF NORTH CAROLINA,
DEPARTMENT OF HUMAN RESOURCES,
Respondent.

MSPB DOCKET NUMBER
CB1216920032T1

DATE: FEB 25 1993

Ruth Robinson Ertel, Esquire, Washington, D.C., for
petitioner.

H. M. Michaux, Esquire, Durham, North Carolina. for
respondent Giles.

Susan B. Hutchins, Raleigh, North Carolina, for
respondent State of North Carolina Department of
Human Resources.

BEFORE

Daniel R. Levinson, Chairman
Antonio C. Amador, Vice Chairman
Jessica L. Parks, Member

FINAL DECISION AND ORDER

This case is before the Board pursuant to a complaint for disciplinary action filed September 2, 1992, by the Office of Special Counsel alleging that Deborah G. Giles violated the Hatch Act, 5 U.S.C. §§ 1501 et seq. The Special Counsel charged that the North Carolina Department of Human Resources (NCDHR) is a State agency which administers a number of federal assistance programs and receives federal grants from the U. S. Department of Health

and Human Services (HHS). The Special Counsel further charged that respondent Giles, an employee of NCDHR who had duties in connection with federal grants from HHS, violated the Hatch Act when she was a Democratic nominee for the position of Durham County Commissioner in the 1992 primary election. The Special Counsel requested the Board to find that respondent Giles engaged in unlawful political activity which warranted her removal from her position with the NCDHR.

The case was assigned to the Board's Chief Administrative Law Judge (CALJ) for adjudication. On October 19, 1992, the parties submitted a Joint Motion for Approval of Settlement Agreement and Settlement Agreement. In the agreement, respondent Giles waived her rights to a hearing and to judicial review under 5 U.S.C. § 1215(a)(4). She agreed to submit her resignation effective November 1, 1992, and further agreed that she will not seek employment in a non-elective position in a State or local agency in the State of North Carolina for a period of 18 months, commencing on the date of the Board's final decision in this matter. A copy of Ms. Giles' resignation letter was attached to the agreement. Finally, all parties requested the CALJ to recommend to the Board that the agreement be approved and included in the record of the case, and that the Board enter an order dismissing the complaint.

The CALJ determined that the Board had jurisdiction over the case because respondent Giles had duties in

connection with federal grants from HHS and, as such, was covered by the provisions of the Hatch Act. He further found that her pursuit of her candidacy despite fair and specific warning that it would be a violation of the Hatch Act was conspicuous, knowing and deliberate. He found therefore that the violation was established by preponderant evidence through the stipulated facts. He also found the agreement lawful on its face, clear in content and freely reached by the parties. In a decision issued October 27, 1992, he accordingly recommended that the Board dismiss the complaint. Although the CALJ notified the parties that exceptions and replies to the recommended decision could be submitted to the Clerk of the Board, none have been filed.

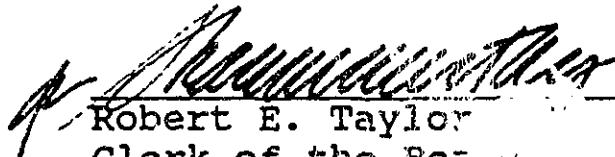
Board policy is to favor the use of settlements to avoid the unnecessary expenditure of resources in litigation. The Board finds the settlement agreement freely entered and not unlawful. We agree with the CALJ that approving this settlement serves the interest of justice and the interest of judicial economy. See *Special Counsel v. Dracup*, 44 M.S.P.R. 107 (1990) (settlement agreement in action by Special Counsel alleging violation of Hatch Act, where respondent was not employed by state agency and agreed not to seek reemployment, was approved).

Accordingly, we approve the settlement agreement as recommended by the CALJ and DISMISS the complaint against the respondents. This is the final decision of the Merit Systems Protection Board in this matter.

Respondent Giles and the NCDHR are advised that they may seek judicial review of the decision of the United States District Court for the district in which respondent Giles resides. 5 U.S.C. § 1508. The petition for review must be filed within 30 days after the mailing of this final decision.

FOR THE BOARD:

Washington, D.C.


Robert E. Taylor
Clerk of the Board